IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4668 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

AGRICULTURAL PRODUCE MARKET COMMITTEE - Petitioner(s)

Versus

MODASA MUNICIPALITY & 1 - Respondent(s)

==========

Appearance :

MR KETAN A DAVE for Petitioner(s) : 1,
MR AM RAVAL for Respondent(s) : 1 - 2.

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 25/01/2006

ORAL JUDGMENT

1. In the present petition the petitioner at the time of filing this petition, challenged the action of respondents with regard to demolition of certain shops

constructed by the petitioner. The petitioner is the Agricultural Produce Market Committee – Modasa. The petitioner had constructed certain shops. The respondent – Modasa Municipality found that the shops of the petitioner were constructed without prior permission and demolished the same. This aggrieved the petitioner and the present petition came to be filed. During the pendency of the petition certain further developments took place. The petitioner, had applied for approving plans of the shops for construction of the shops anew. The petitioner received communication from the respondent dated 11-07-1995 intimating the decision of the respondents to reject the request of the petitioner for approving the building plans. The petitioner, therefore, amended the petition and also challenged the said communication dated 11-07-1995.

2. In so far as the challenge to demolition is concerned, it is a admitted fact that the demolition of the shops is completed. The demolition even if held to be illegal, the petitioner may be in a position to claim compensation for such illegal action of the respondents. For want of necessary material and in the very nature of thing, since the said question would

involve number of disputed question of facts, it is not possible for this Court to undertake the exercise to assess and quantify the damages caused to the petitioner, even if demolition was to be declared as illegal. In that view of the matter, it is not necessary to go into the legality of the demolition carried out by the respondents. It may be noted that the stand of the respondents before the Court is that the construction which was carried out was without prior permission by the petitioner, and despite notices calling upon the petitioner to stop the construction and to remove existing construction, the petitioner disregarded such notices issued by the respondents.

3. The question therefore, survives for consideration in the present petition is with respect to the communication dated 11-07-1995 by which the respondent refused to approve the building plans submitted by the petitioner and refused to grant permission for construction. Many years have passed since the communication was issued. The petitioner itself may be interested in changing the building plans for which the permission was sought at the relevant time. For all these reasons it would not be appropriate to examine the

request of the petitioner for granting permission for putting up the construction. It is contended on behalf of the petitioner that the permission was refused on untenable grounds. Be that as it may, the request of the petitioner for permitting the construction was never examined on its merits to find out whether such construction is permissible within building regulations. The request of the petitioner was rejected summarily on the ground that certain details were not provided by the petitioner.

4. Considering all these aspects of the matter, it would be appropriate that the petitioner makes a fresh application to the respondents for permitting the petitioner to carry out the construction. If such application is made by the petitioner within two weeks with all necessary documents, the respondent – Municipality shall process the same and take decision in accordance with law expeditiously and preferably within two months from its receipt. This however, will not close the doors of the petitioner to seek further remedy if available under the law.

5. With these directions the petition is disposed of. Rule made absolute accordingly. No order as to costs.

[Akil Kureshi, J.]

satishcv